

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARIA GOMEZ,

PLAINTIFF

v.

**MANAGING INNOVATION AND
TECHNOLOGY, INC. AND THI
HONG NGUYEN, INDIVIDUALLY,**

DEFENDANTS

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CIVIL ACTION NO. 3:14-cv-936

JURY DEMANDED

PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to Federal Rule of Civil Procedure 55, Plaintiff Maria Gomez (“Plaintiff”), moves this Honorable Court for entry of Default Judgment against Defendant Managing Innovation and Technology, Inc. (“Defendant”). In support thereof, Plaintiff would show unto this Honorable Court as follows:

1. Plaintiff filed this civil action on March 14, 2014.
2. On August 6, 2015 this Court granted defense counsel’s amended motion to withdraw as attorney for Managing Innovation and Technology, Inc.. [See Docket Entry No. 37].
3. On August 6, 2015 this Court filed a Notice of Deficiency and Order requiring Defendant Managing Innovation and Technology, Inc. to hire new representation in this matter by August 20, 2015, or Defendant would be subject to sanctions, including the entry of default judgment. [See Docket Entry No. 38].
4. On August 27, 2015 this Court issued an Order finding that Defendant

Managing Innovation and Technology, Inc. had failed to comply with the Court's previous Order to retain new representation, struck Managing Innovation and Technology, Inc.'s First Amended Answer, and directed Plaintiff to move for default judgment against Managing Innovation and Technology, Inc. for failure to appear by and through counsel. [See Docket Entry No. 41]

5. On August 27, 2015 the Clerk of the Court filed an entry of default as to Managing Innovation and Technology, Inc. [See Docket Entry No. 42]

6. Defendant Managing Innovation and Technology, Inc. is a corporation and therefore is not an incompetent person.

7. In support of Maria Gomez's claim for damages, attached hereto as Exhibit 1 is the Declaration of Maria Gomez which supports the following:

- Plaintiff was employed by Defendants from approximately January 11, 2013 through January 17, 2014;
- During the three years preceding the filing of this suit, Plaintiff was paid an annual salary of \$52,000;
- For the period of January 11, 2013 through July 31, 2013, 28 weeks, Plaintiff worked a total of 62.50 hours per week, which includes 22.50 hours of overtime per week during this period. Plaintiff was only paid straight time for all hours worked, including hours over forty (40) in a single work week.
- To calculate Plaintiff's effective hourly rate during this period, Plaintiff's weekly salary of \$1,000.00 is divided by the total hours Plaintiff worked per week, 62.50. \$1,000.000 divided by 62.50 hours comes to \$16.00 an hour. To determine Plaintiff's overtime rate, \$16.00 is divided by 2, which comes to \$8.00

an hour. \$8.00 multiplied by the total amount of overtime hours Plaintiff worked per week, 22.50, comes to \$180.00. \$180.00 multiplied by the total number of weeks during this period, 28, comes to \$5,040.00. Thus, Plaintiff is owed \$5,040.00 in unpaid overtime during this period.

- For the period of August 2013 through January 17, 2014, 24 weeks, Plaintiff worked a total 54.25 hours per week, which includes 14.25 hours of overtime. Plaintiff was paid straight time for all hours worked, including hours over forty (40) in a single work week.

- To calculate Plaintiff's effective hourly rate during this period, Plaintiff's weekly salary of \$1,000.00 is divided by the total hours Plaintiff worked per week, 54.25. \$1,000.00 divided by 54.25 comes to \$18.43 an hour. To determine Plaintiff's overtime rate, \$18.43 is divided by 2, which comes to \$9.21. \$9.21 multiplied by the total amount of overtime hours Plaintiff worked per week, 14.25, comes to \$131.24. \$131.24 multiplied by the total number of weeks during this period, 24, comes to \$3,149.76. Thus, Plaintiff is owed \$3,149.76 in unpaid overtime during this period. Adding the total amount of unpaid overtime that Plaintiff is owed from both periods comes to \$8,189.76.

- Plaintiff Gomez is owed eight thousand, one hundred and eighty nine dollars, and seventy six cents (\$8,189.76) in unpaid overtime from January 11, 2013 through January 17, 2014.

8. Plaintiff has pled that Defendant Managing Innovation and Technology, Inc. failed to make a good faith effort to comply with the FLSA and that its violations were made knowingly, willfully, or with reckless disregard for whether its conduct

complied with the requirements of the FLSA, thereby entitling Plaintiff to an award of liquidated damages.

9. Plaintiff has pled for an award of attorneys' fees and costs and is entitled to a mandatory award of attorneys' fees and costs pursuant to the Fair Labor Standards Act. 29 U.S.C. § 216(b). Attached hereto as Exhibit 3 is the affidavit of Douglas B. Welmaker attesting to the attorneys' fees and costs in this matter.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter default judgment against Defendant Managing Innovation and Technology, Inc. on the causes of action pled in Plaintiff's Original Complaint for the amount of damages, attorneys' fees, and costs of court, and for all such other and further relief to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

/s/ Douglas B. Welmaker
Douglas B. Welmaker
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this the 7th day of October, 2015, a true and correct copy of the foregoing was served, upon all parties of record, in the manner indicated below.

VIA CM/RRR 91 7199 9991 7030 0911 4821

Managing Innovation and Technology, Inc.
Attn: Scott Rohleder
7920 Belt Line Road, Suite 1000
Dallas, Texas 75254

Managing Innovation and Technology, Inc.
Attn: Thi Hong Nguyen
8600 Freeport Parkway, Suite 110
Irving, Texas 75063

/s/ Douglas B. Welmaker
Douglas B Welmaker